her hands. Finally, Messrs. Presgrave & Matthews having written that they would have to commence proceedings against Madam Tan Kim Heoh, the respondent wrote on 12th January 1940 "I shall make another effort to get in touch with my client (Madam Tan Kim Heoh) but if I cannot succeed then I think perhaps you had better commence proceedings straight away."

That is, that the remaining trustee of the will should be sued for a legacy already paid to the respondent by the first trustee for payment to the beneficiary.

The respondent entered the sum of $1,000.00 in his Clients' Account Book. He did not pay it into any bank account. He kept no separate client account with a bank as required by Rule 10 of the Penang Bar Committee Rules regulating the practice and etiquette of the Penang Bar (G.N. 3138/1936) made under section 31 of the Advocates & Solicitors Ordinance. This is a legal and not merely a moral obligation.

At no material time until 10 a.m. on 4th October 1940, after he had issued the cheque by which he paid over this sum of $1,000.00, had the respondent anything but a nominal balance in his bank account.

The evidence was sufficient to sustain a conviction under section 403 of the Penal Code.

Section 25 of the Advocates & Solicitors Ordinance enacts that an advocate shall be liable to be struck off the Roll or suspended or censured if he has (among other things) "been guilty of fraudulent or grossly improper conduct in the discharge of his professional duty or guilty of such breach of any rules of usage or conduct made by a Bar Committee . . . . as in the opinion of the Court amounts to improper conduct".

On behalf of the respondent we were referred to *In re Sparks*[1]; *Guilford v. Sims*[2] in which what the Court was considering was fraud or no fraud, and in the latter case the Court held that absence of wilful deceit negatived fraud. In *in re a Solicitor*[3], Wills, J. said he saw no evidence of any misrepresentation or deceit of the attorney. Under the Colony Ordinance we have to consider not only fraudulent conduct, but also grossly improper conduct.

We consider that the letters to which we have referred provide overwhelming evidence of misrepresentation and deceit. The respondent was pretending that the money had not already been paid to him by the trustee.

We were also referred to the recent Federated Malay States case of *In re an Advocate and Solicitor*[4].

In that case there appears to have been no deceit, a circumstance which differentiates it from the present case. But we have difficulty in following that case because the Court there said "it is extremely reprehensible conduct on the part of any advocate who obtains money for distribution to the beneficiaries of an estate, to retain that money in his possession for twelve months without taking any steps whatever to distribute the sums to those entitled, even and although there may be costs or fees due to him in regard thereto".

In our opinion "extremely reprehensible conduct" is the same thing as grossly improper conduct which is conduct for which, under the Federated Malay States Enactment and under the Colony Ordinance, an advocate can be punished.

We are of opinion that grossly improper conduct in the discharge of his professional duty by the respondent has been established.

We direct that he be struck off the Rolls with costs agreed at one hundred dollars.

Respondent struck off the Rolls.

REX vs. BAHADUR SINGH AND ANOTHER.

[Appellate Criminal Jurisdiction (McElwaine, C.J.)

August 1, 1941]

Traction Engines and Motor Cars Ordinance (Cap. 214)—Rule 15A (1) of Rules thereunder—Load on lorry not to exceed sum of registered axle weights of lorry—Meaning of "load."

The defendants were charged with carrying on a motor lorry a load which exceeded the sum of the registered axle weights of the lorry contrary to Rule 15A (1) of the Rules made under the Traction Engines and Motor Cars Ordinance (Cap. 214). A question arose on the interpretation of the rule whether the rule allowed a load not exceeding the sum of the registered axle weights to be placed on the lorry or whether the rule meant that the maximum load which could be placed on the lorry was the difference between the sum of the registered axle and the weight of the lorry unloaded.

Held, that having regard to the definition of "axle weight" the reasonable interpretation of Rule 15A was that the maximum load a lorry might impose on the road was the sum of its registered axle weights and therefore that the maximum weight of cargo which could be put in the lorry was the sum of the registered axle weights minus the weight of the lorry as defined in the Ordinance.

CRIMINAL APPEAL.

Mark Morrison for the defendants.

C. H. Butterfield Crown Counsel for the Crown.

The facts and arguments appear sufficiently from the judgment.

McElwaine, C.J.—This special case comes before me under somewhat unusual circumstances. The defendants were charged with carrying a load on a motor lorry which exceeded the sum of the registered axle weights of the lorry contrary to Rule 15A (1) of the Rules made under the Traction Engines and Motor Cars Ordinance (Cap. 214).

Two interpretations of the meaning of the word 'load' in the Rule were advanced before the learned Magistrate and there is no question as to the guilt of the defendants even if the interpretation most favourable to them is adopted, unless the rule is invalid by reason of uncertainty. It was not suggested that the rule is not within the powers conferred by s. 16 of the Ordinance. Rule 15A (1) which is contained in Gazette Notification 1426 of 1939 is as follows:—

"15A—(1). No person shall use or permit to be used on a public thoroughfare any traction engine constructed for the purpose of carrying goods and merchandise or any trailer, the load of which exceeds the sum of the registered axle weights of such traction engine or trailer."

Two views were advanced, the first that the rule allows a load not exceeding the sum of the registered axle weights to be placed on the lorry; the second that the rule means that the maximum load which could be placed on the lorry was the difference between the sum of the registered axle weights and the weight of the lorry unloaded.

The words used in the rule are the "load of which" not "the load on which."

"Axle weight" is defined as the aggregate weights transmitted to the road by the wheels of an axle when the lorry is loaded. By rule 13A (1) this weight is to be ascertained and registered by the Registrar of Vehicles and it is the "registered axle weight."

In assessing the axle weight the Registrar of Vehicles takes into consideration the size and strength of the lorry—what weight can it safely carry? The rest of the rules on weights seems to have regard to the load which may be imposed on roads and bridges.

Mr. Morrison's argument that weight of the load or cargo which can be carried may amount to the sum of the axle weights, comes to this—the weight of the cargo is the sum of the following weights: the actual weight of the lorry unloaded, the weight of the driver and attendants, the weight of water when the radiator is full and the weight of the cargo. In other words the weight of the cargo which may be carried is the weight of the cargo plus a considerable amount more.

I think this an absurd interpretation, and in my opinion the reasonable construction of Rule 15A is that the maximum load a lorry may impose on a public road is the sum of its registered axle weights and from this it follows that the maximum weight of cargo which can be put in the lorry is the sum of the registered axle weights minus the weight of the lorry as defined in the Ordinance.

The conviction and sentence of the defendants in the case stated are confirmed, but to overload a lorry by almost three tons, as the Magistrate thought, is deserving of more than a nominal penalty. It was in fact overloaded by over five tons.

Solicitor for the appellants. Mark Morrison.

Order accordingly.

TAN JOO PHUANG vs. REX.

[Court of Criminal Appeal (McElwaine, C.J., Aitken, Ag. J.A. and Worley, J.) July 29, 1941]

Merchandise Marks Ordinance (Cap. 157), s. 12—Trade Marks Ordinance (1938), s. 23—Claim that trade mark registered under Trade Marks Ordinance should not have been registered—Whether Magistrate can so decide.

The appellant was convicted with possession for the purpose of sale of rice flour to which a counterfeit trade mark had been applied. On appeal to the Court of Criminal Appeal it was contended that the learned District Judge should have held that owing to the continuous use of the trade mark in question by other people the trade mark should not have been registered and therefore that the then registered proprietor was disentitled to protection in a Court of Justice.

Held, that once a trade mark has been registered under the Trade Marks Ordinance Magistrates must treat it as being properly registered and must treat the owner of an uncancelled unexpired certificate of registration as the owner of a mark which is protected by law in the Colony within the definition of "Trade Mark" in the Merchandise Marks Ordinance.

CRIMINAL APPEAL.

E. M. Tampoe-Philips for appellant.

C. H. Butterfield Crown Counsel for Crown.

The facts and arguments appear sufficiently from the judgment of the Court of Appeal (McElwaine, C.J., Aitken, Ag. J.A., and Worley, J.) was delivered by:—

McElwaine, C.J.—The appellant was convicted on two charges:—

(1) with possession for the purpose of sale of six bags of rice flour to which a counterfeit trade mark had been applied, namely the "Goldfish" trade mark, which mark was owned by Lee Yew Cheng of Chop Teck Chiang,